

**OTS**  
**WASHINGTON, DC**  
**REPORT ON SECURITIES FILINGS FOR 1999**

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November 1999

**Roger M. Smith**  
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**Accounting Policy Division**

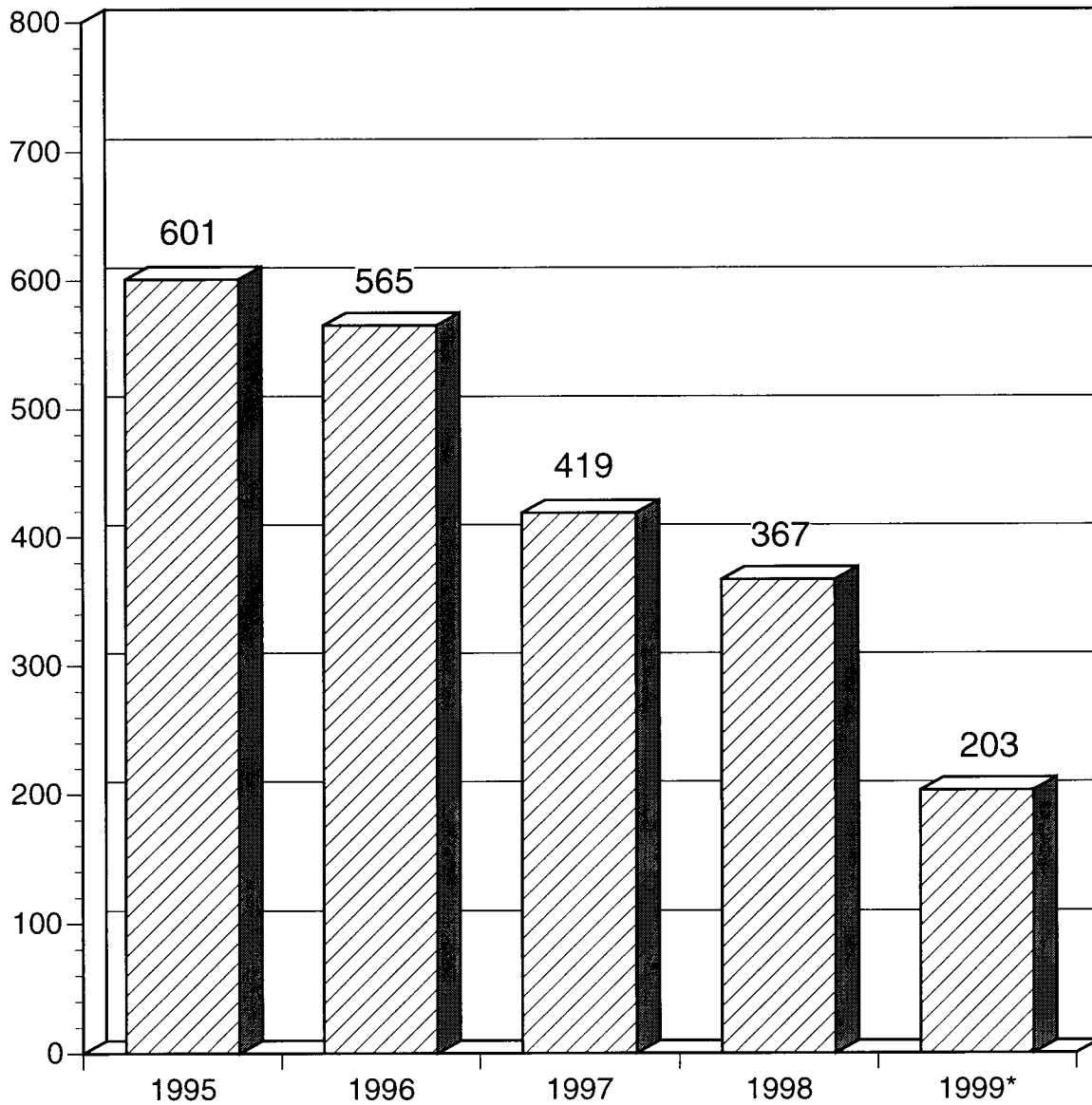
**OFFICE OF THRIFT SUPERVISION**  
**REPORT ON SECURITIES FILINGS FOR 1999**

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## 1934 Act Filings\*\*

### Numbers Received by Fiscal Year

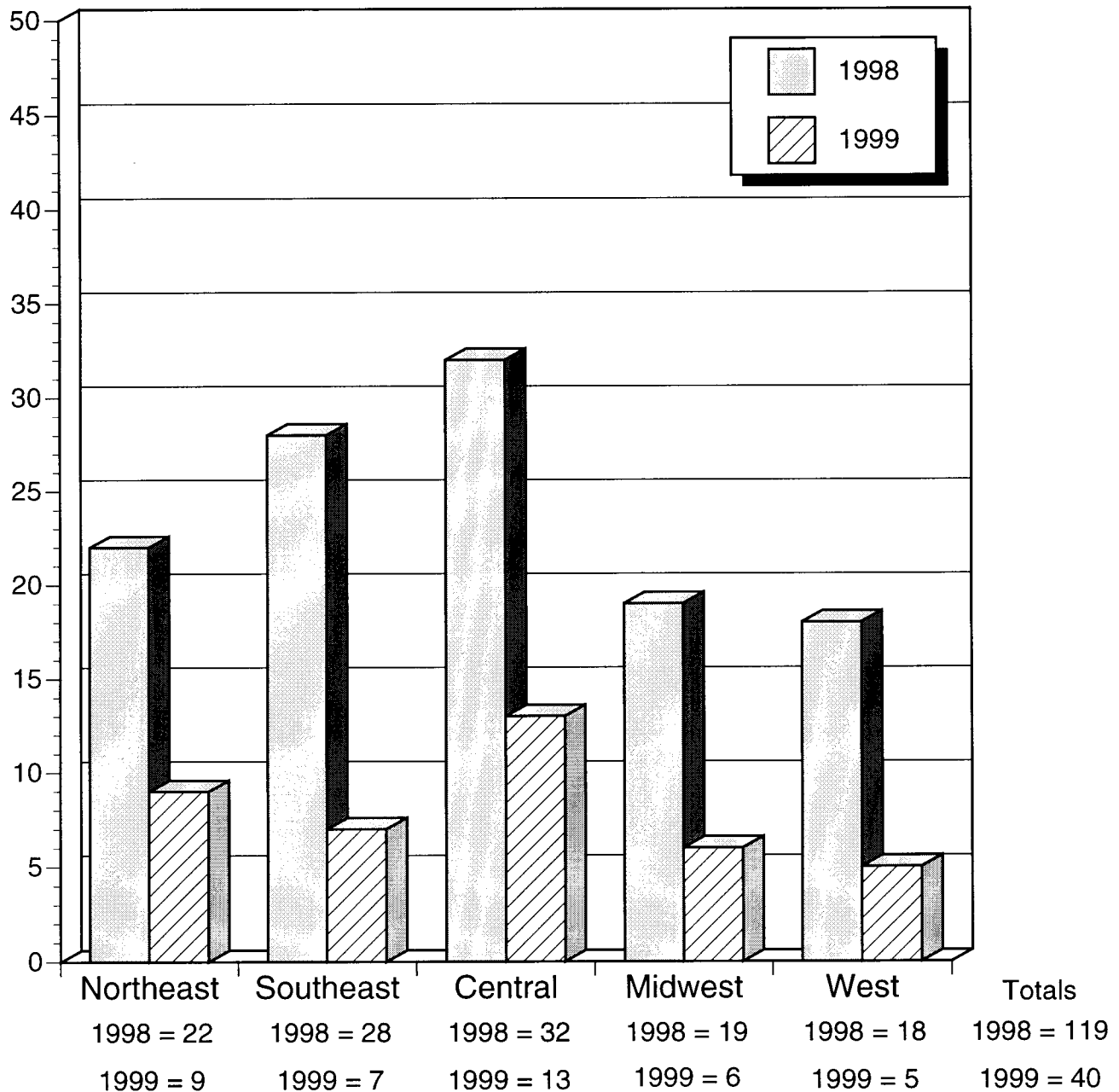


Source: Office of Thrift Supervision  
Securities Filings Section

\* Estimated

\*\* For Example Forms 10-K, 10-Q, 8-K, 10, 15, etc.

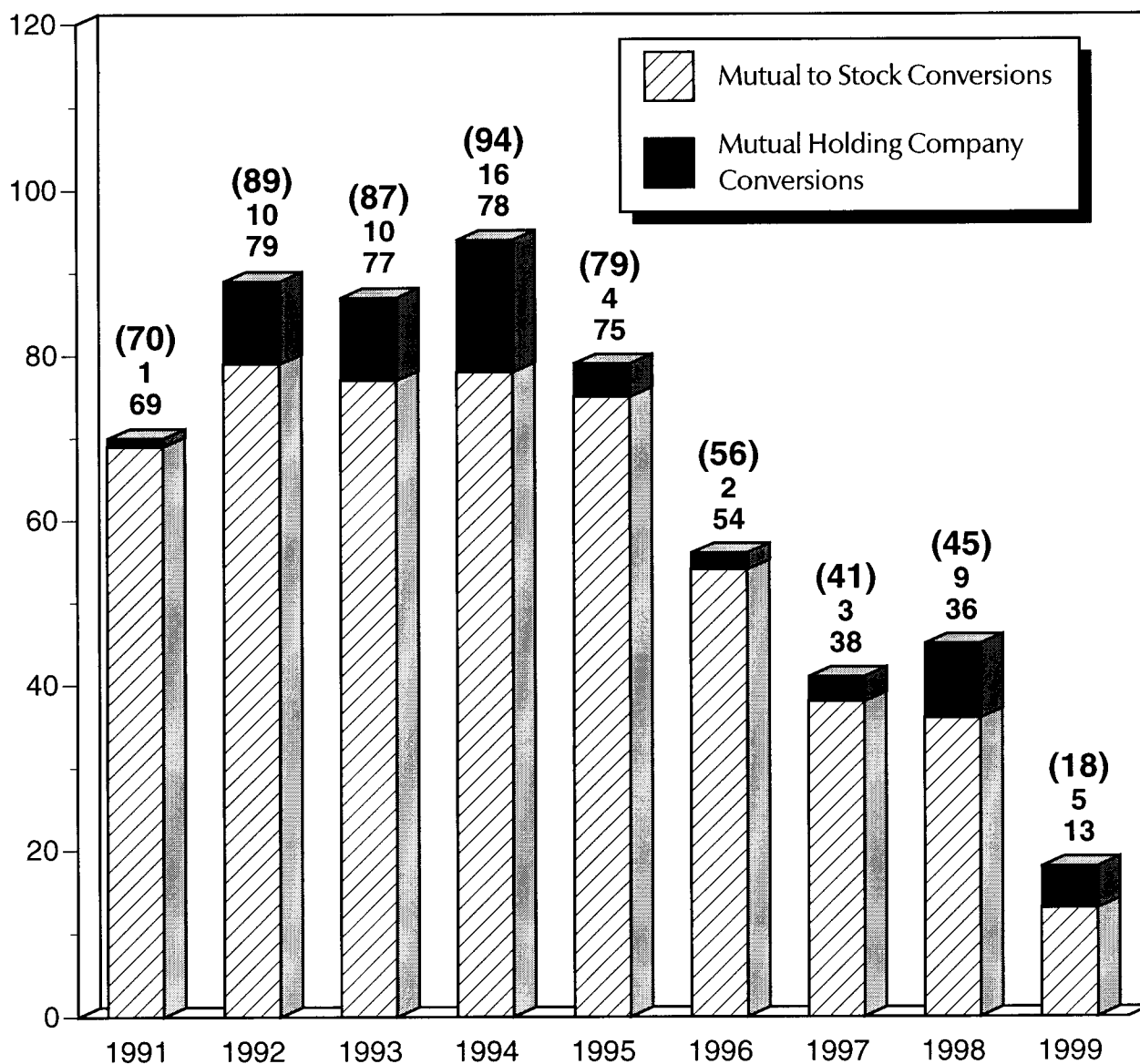
# Number of OTS '34 Act Stock Thrift Institutions



Source: Office of Thrift Supervision  
Securities Filings Section  
10/15/99

# Mutual to Stock Conversions

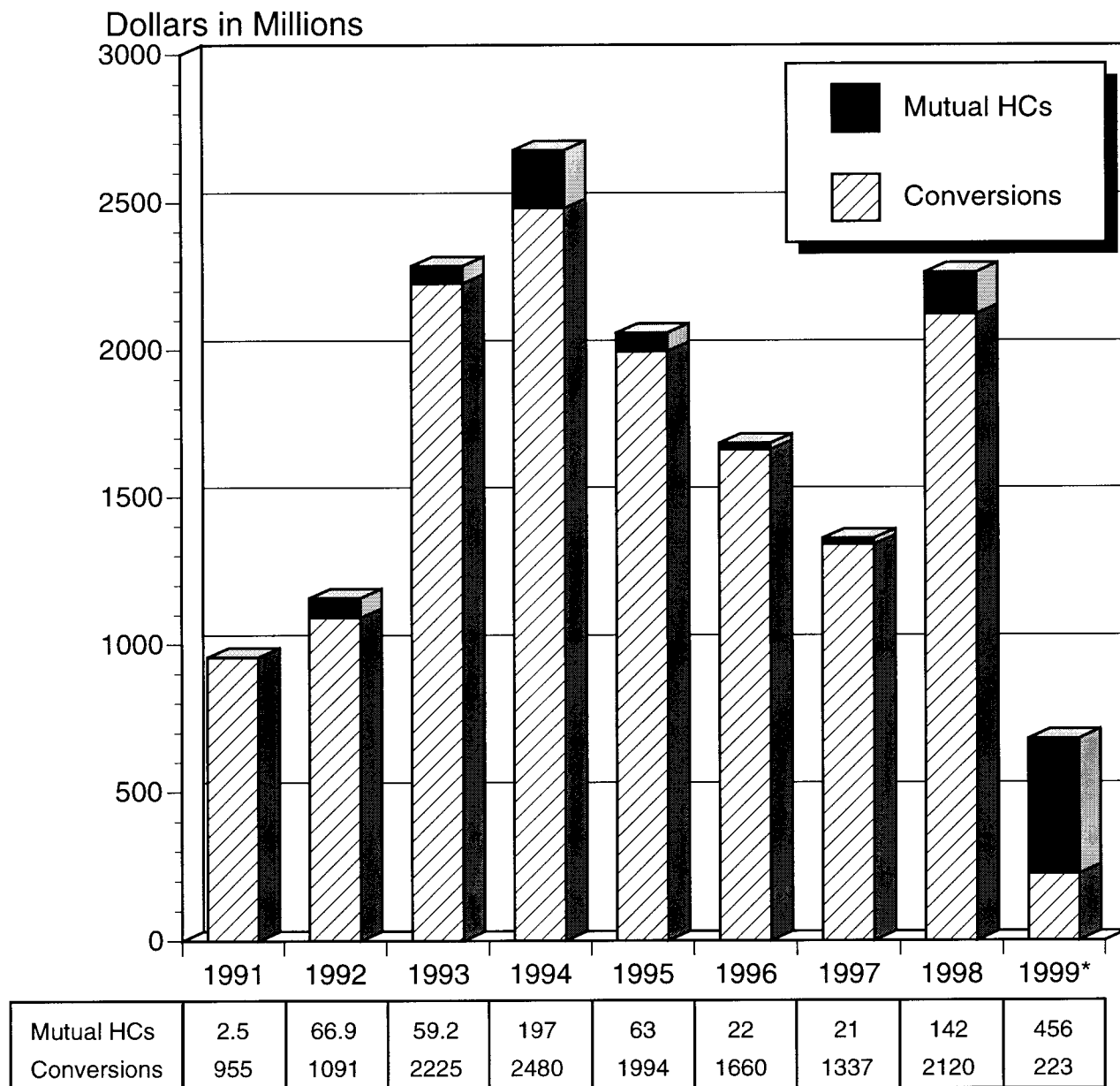
## Numbers Approved by Year



Source: Office of Thrift Supervision  
J. Larry Fleck

\* Approved through 10/15/99

# Dollars Raised by Conversions Including Mutual Holding Company Conversions



Source: Office of Thrift Supervision  
Business Transactions Division, J. L. Fleck  
(\*1/1/99 through 10/15/99)

# OTS Limited Review Checklist

## Form 10-K

Year Ended \_\_\_\_\_

Name \_\_\_\_\_ OTS # \_\_\_\_\_

City, State \_\_\_\_\_

Review Accountant \_\_\_\_\_

### COMMENTS

1. Review the form and content of the financial statements and MD&A for reasonableness. Determine appropriate financial statement periods. Determine that significant changes in the b/s and income statements are explained in the MD&A. The MD&A should be more than a listing of changes and percentages. Also determine that all significant items noted in the MD&A are reflected in the financial statements. Review current changes in the CCH and EITF manuals with each review.
2. Determine if the opinion is anything other than a standard opinion or one that has an explanation paragraph related to a new FASB. Note any changes in accounting principles, mergers, references to internal control issues and/or disagreements by the independent accountant. Note any change in independent accountants and determine if a Form 8-K was properly filed.
3. Ensure compliance with prior year comments and review OTS restricted access for 310 memos and other current messages. Make sure that exception conditions noted in Forms 10-Q are not repeated in the Form 10-K.
4. Determine that the following major tables are included:
  - a. Loan maturity table
  - b. Five year financial summary
  - c. Rate volume table
  - d. Savings & deposit by rates (200 basis points)
  - e. Average yield/average rates paid
5. Note any single transaction that results in significant gains, especially sales of REO.

Name \_\_\_\_\_ OTS # \_\_\_\_\_

6. Identify any research and development cost and/or restructuring charges.
  7. Review the activity in the allowance for loan and REO losses for reasonableness. The allowance should only reflect known and expected losses inherent in the portfolio. Regulatory unsupported percentage calculations are not appropriate. There should be no references to “cushions” or any indication of “smoothing income.” Compare the ending allowance for loans to the schedule of non-performing loans for reasonableness.
  8. Summarize all related party transactions other than normal mortgage loans.
  9. Note any new intangibles and/or goodwill. Note any amortization periods in excess of 15 years. Also note any write-offs or changes in the goodwill already recorded.
  10. Note disclosures related to derivatives (futures, forwards, caps, floors, swaps and options). The disclosures should be complete and understandable. The derivative disclosures should state the extent and the potential effects of the derivative investment. The disclosures should be in the financial statements and the MD&A.
  11. Note the reconciliation of GAAP capital to regulatory capital requirements. Document any capital failures and/or unusual reconciling items.
  12. Note any significant decreases in investments held to maturity for reasons other than principal repayments. Any sales of investments held to maturity should be noted.
  13. Ensure the MD&A includes a discussion of New accounting pronouncements. (SAB 74 )
  14. Note derivative and market risk disclosures, both qualitative and quantitative.
  15. Note the current status of year 2000 plans. Ensure disclosure of the costs and technical difficulties related to plan implementation.
-



Name \_\_\_\_\_ OTS # \_\_\_\_\_

16. Review the latest report of examination (ROE) and determine if significant exception conditions not noted in 1. to 13. above are adequately disclosed in the Form 10-K.

Date of ROE \_\_\_\_\_. C \_\_\_\_ A \_\_\_\_ M \_\_\_\_ E \_\_\_\_ L \_\_\_\_ S \_\_\_\_

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Accounting Review by Senior Reviewer

Reviewer \_\_\_\_\_

17. Review the above and perform a cursory review of the financial statements and the MD&A.
18. Issue amendment and requests for supplemental information if appropriate. Future comments will normally not be issued in a limited review.

\_\_\_\_\_  
OTHER COMMENTS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ***Common Reporting Comments***

### ***(Accounting)***

#### Forms 10-K

1. Disclose in the Management's Discussion and Analysis, any known trends, events or uncertainties that will have or that are reasonably likely to have a material effect on the registrant's liquidity, capital resources or results of operations. If the registrant is aware of any current recommendations by the regulatory authorities which, if they were to be implemented, would have such an effect, appropriate disclosure should be included in the Management's Discussion and Analysis. Reference should be made to any Supervisory Agreement entered into with the OTS. Explain how the agreement affects the institution's overall operations and its impact on earnings. (Item 303 of Regulation S-K)
2. The institution's regulatory capital disclosures in Note XX do not fully comply with the requirements in Chapter 2 of the AICPA, Audit and Accounting Guide for banks and savings institutions (guide) issued April 1996. The current guide requires the regulatory disclosures to be made in the primary financial statements and to be covered by the independent accountant's report.

The following disclosures are required:

- a. A description of the regulatory capital requirement for prompt corrective action under FDICIA, in addition to those disclosures indicated for capital adequacy under FIRREA.
- b. The actual or possible material effects of noncompliance with the requirements.
- c. The actual amounts and ratios, and required amounts and ratios, for each of the various measures of regulatory capital for prompt corrective disclosures included for capital adequacy under FDICIA (Tier 1, Tier 1 risk-based, and total risk-based), in addition to those quantitative disclosures included for capital adequacy under FIRREA (tangible, core or leverage, and risk-based).

- d. Factors that may significantly affect regulatory capital compliance.
  - e. The prompt corrective action category in which the institution was classified as of its most recent notification.
  - f. Whether management believes any conditions or events since notification have changed the institution's category.
  - g. The regulatory matters table in Note XX should begin with GAAP equity as disclosed in the consolidated statements of financial condition. The difference between GAAP equity and tangible capital should be disclosed in the notes. The difference between tangible capital and risk based capital should be disclosed.
- 3. Disclose management's policy for determining which assets are held to maturity, available for sale, and/or held for trading. Material transfers between categories should be explained. (FASB 115)
  - 4. Recently adopted accounting pronouncements such as Statements of Financial Accounting Standards ("SFAS") Nos. 130-134 should be discussed. Discussions regarding the adoption of accounting pronouncements should address any potential impact directly on the financial statements or on the reporting requirements of adopting the new pronouncements.
  - 5. Separately report the amounts of mortgage-backed securities from loans receivable on the statements of financial condition. The staff interprets this comment as applicable for other presentations throughout the filings, e.g., the yields earned/rates paid table, the rate/volume variance, the statements of operations, and the interest-rate sensitivity "gap" table.
  - 6. Separately disclose cash flows from purchases and sales of loans, mortgages-backed securities and investments in the statements of cash flows. Disclose loans, investments and mortgage-backed securities as separate line items therein. (SFAS No. 104, paragraph 21)
  - 7. Expand the MD&A to include discussion of the increase in the provision for loan losses. The discussion should specifically explain what event or events caused the increase. Material fourth quarter increases should also be explained. The provision for loan losses should not be increased due to "...continued loan growth." The provision should be increased in accordance with the requirements set forth in FASB #5 and FASB #114.
  - 8. Disclose cash receipts and cash payments from loans originated or purchased specifically for resale under operating activities in the statements of cash flows. The staff also interprets this comment as applicable to mortgage-backed securities or investments held-for-sale. (SFAS No. 102, paragraph 9)

9. Remove the distinction or expand the discussion to explain the impact on regulatory capital of accounting policies for allowance for loan losses that make reference to specific and general loan loss allowances. Record increases to the allowances for loans losses (or real estate acquired) when losses are both **probable** and **estimable** (not when significant and permanent, or in keeping with regulatory trends). (SFAS No. 5, paragraph 8, and SFAS No. 114)
10. Page XX of the AR-Note (3) Loans Receivable discloses charge-offs net of recoveries. Loan recoveries should be disclosed separately. (REG 563c.102(1)(8(K))
11. Disclose the allocation of the loan loss allowance by major loan categories (i.e., real estate - mortgage, real estate - construction, installment loans to individuals, commercial, financial and agricultural; or lease financing) as required by the Securities and Exchange Commission (SEC) Industry Guide 3, Item IV.B. Supplement the table with a discussion of the larger delinquent loans. Provide a similar analysis of charge-offs and recoveries in the allowance for loan losses using the same loan categories. (SEC Industry Guide 3)
12. Expand the non-performing assets section to discuss significant problem loans and other non-performing assets. Discuss the nature of the loan or project, the activities of management to bring the loan current, provide for its sale, or otherwise resolve the non-performing project, the original loan value, the current appraised value, the current loss allowance, and any anticipated future loss. (Staff requirement)
13. Page XX of the AR - Management's Discussion and Analysis. Provisions for Loan Losses states that "Management believes the allowance for **possible** loan losses of \$XXX at June 30, XXXX is adequate. " Allowance for loan losses should be based on whether a loss is both **probable** and reasonable estimable. Eliminate all references to **possible**, **potential**, **anticipated** and **future** loan losses.
14. Discuss market risk, both quantitative and qualitative in the MD&A. Small business registrants are encouraged, but not required, to include the market risk disclosures. (SEC Regulation S-X, 4-08(a))

#### **Forms 10-Q**

1. Clearly mark financial statements as unaudited on the face of the statement. (AICPA Professional Standards AU 504.14)
2. Include a statement that any unaudited interim financial statements being furnished reflect all adjustments normal and recurring in nature which are, in the opinion of management, necessary to providing a fair statement of the results for the interim periods being presented. Describe, in appropriate detail, the nature and amount of any adjustments not of a normal recurring nature. (SEC Regulation S-X, Section 210.10-01(b)(8))
3. Discuss market risk, both qualitative and quantitative. (SEC Regulation S-X, 4-08(b))
4. Explain how the institution's quarterly loan loss provision is determined and, if applicable, why the amount has remained the same over successive quarters. Specifically address the provisions of FASB No. 5 and FASB No. 114.

#### **Common Reporting Comments**

5. Provide detailed discussion in the MD&A for significant increases or decreases in assets or liabilities and significant increases and decreases in unrealized gains and losses. (Regulation S-K, Item 303)

### **Conversions, Mutual Holding Companies and Merger Proxies**

1. Disclose the total dollar amount of loans serviced for the benefit of others at the end of each period an income statement is required. (Regulation 563c.10218)(i))
2. Indicate that deposits in excess of \$100,000 are not federally insured. (Staff requirement)
3. Expand the discussions to cover all of the material factors leading up to the decision to materially increase the provision for loan losses. Discuss specific factors in addressing this comment rather than general references to the economy and increases in the loan portfolio.

Expand to cover the extent to which management expects the trend to continue.

Expand the discussion for all reported periods to explain variances in the provision for losses and its effect on the allowance for loan losses within the content of changes in the ratio of the allowance in non-performing loans. Explain specific events and circumstances which caused material changes in these ratios. (See Item 303 of Regulation S-X.)

4. Provide the disclosures required by paragraphs 17-20 of SFAS No. 115 with regard to off-balance sheet financial instruments (e.g., loan commitments, letters of credit, etc.). The staff also references the disclosure requirements of paragraph 47 of SFAS No. 105.
5. The consent of an independent accountant included as an exhibit must state specifically that they “consent,” and “agree,” to the inclusion of their report and to the reference to the independent accountant in the introductory paragraph to the Selected Consolidated Financial and Other Data. Staff requires, as a legal item requirement of Form OC, that independent accountants be named as experts. The “EXPERTS” section states that the report of the independent accountants has been included based on the reliance upon them as experts in accounting and auditing matters, and that a specific consent be supplied.
6. File an amendment to the Form OC, Form AC or Form MHC, as appropriate, in response to the comments. Clearly mark such amendments to disclose all changes from previous filings, including the changes made to the financial statements. A transmittal letter must accompany the amendment and clearly describe where the response to each of the staff’s comments may be found in the marked amendments. Alternately, a copy of the staff’s comments, with appropriate

indication in the margin of that letter as to page and paragraph in the Form OC, Form AC or Form MHC, as appropriate, on which the response to the comment is reflected, may be provided in the transmittal letter. Also, provide any requested supplemental information. If the registrant believes that any comments is inapplicable, or if any comment is not dealt with in whole or in part, full explanation or reasons for this position must be provided for the staff's consideration. (Do not ignore the staff's comments.)

7. Institutions guaranteeing the debt obligation of the ESOP or making annual contributions to cover the principal and interest of the ESOP debt obligation, as well as, institutions funding the common stock to be acquired by a management retention plan, should report the commitment of such funds by the institution as a reduction to the capital computations disclosed in the pro forma capital compliance table. (Staff requirement)
8. Provide the same level of cash flow disclosures on investment activities as presented in the annual financial statements. Disclose proceeds from sales of securities (both categories) separately from proceeds from maturities and redemption. For example, gain (loss) on securities held for investment and gain (loss) on securities available for sale should be separately disclosed.
9. The staff notes substantial unrealized losses in the investment portfolio at December 31, XXXX. Management's Discussion and Analysis should discuss such losses and the interest rate risks associated with the portfolio. In addition, the staff assumes that management has determined that such losses are temporary. Confirm our understanding.
10. Disclose in the footnotes to the capitalization and pro forma data tables the dilutive impact on existing stockholders' interest of issuing authorized but unissued common stock to the MRP subsequent to the initial stock offering for mutual holding company reorganization and conversions. (Staff requirement)
11. Disclose the pro forma unearned deferred compensation for management retention plans (MRPS) as a reduction to equity in the stockholders' equity section of the capitalization and pro forma tables for mutual holding company reorganizations and conversions. Common stock authorized and issued and additional paid-in capital should not reflect stock to be issued to the MRP subsequent to the initial stock offering. (Staff requirement)
12. Discuss the reason(s) for the significant increase in the Provision for Loan Losses and whether such increase represents a trend or uncertainty which is expected to continue.  
  
Also address the reason(s) for the significant strengthening of the Company's Allowance for Loan Losses as a percentage of total loans and as a percentage of non-performing in the Management's Discussion and Analysis.
13. Where the consolidated financial statements report material changes from period to period in one or more line items, the causes for the change should be described to the extent necessary to an understanding of the Company's business as a whole.

The Company need not recite the amount of change from the financial statements. Where the change is the result of several factors, the relative importance of each should of course be made clear, and quantified to the extent practicable. Those changes attributable directly to management's action should be distinguished from those factors outside the Company's control.

14. Revise the Management's Discussion and Analysis to explain how the financial statements reflect management's assessment of the business environment and its business plan. The changes should include analysis of the change in material income statement line item:
  - (a.) a discussion of loan demand for each period (by product and customer);
  - (b.) a discussion of the depositor base (effects of disintermediation, competitive rate conditions, rollover trends); and
  - (c.) a discussion of security selection strategy (geographic concentration, duration, credit risk, market risk, interest rate risk).
15. Provide an updated accountant's consent letter with each updated filing made with the OTS. The consent letter should give consent to use of the independent auditor's name in the "Expert" section of the filing.
16. Management should perform an analysis to determine if estimated earnings from the investment of net proceeds based on the arithmetic method prescribed by OTS regulations are materially different from the actual results expected by management based on actual yields management anticipates receiving on such net proceeds. If there is a material difference, the more conservative method must be used and the reasons for using the alternative method must be disclosed. (Staff requirement)
17. Provide a Recent Development Section for each financial institution included in the application whose most recent financial statements are greater than 105 days old. (Staff requirement)
18. Provide comparative financial statements for each institution involved in the process. Financial statements should not be incorporated by reference. Report all required periods, including interim periods, in the comparative financial statements **side-by-side**. The related notes must cover all periods presented. (Regulation 563b.101, Item 14)
19. The interest method should be used to amortize premiums and accrete discounts to income for loans, investments, mortgage-backed securities, loan origination/commitment fees, purchased mortgage servicing rights, and retained excess servicing. Methods that approximate the interest method are not acceptable.
20. The independent accountant(s) is required to read the relevant sections of the prospectus to make sure that her/his name is not being used in a way that indicate that her/his responsibility is greater than she/he intends and that, as an expert, there is no omission of a material fact that would make the filing misleading. (Regulations 563b.8(p) and 563b.101, Item 15)

21. The association is required to review the Management's Discussion and Analysis and add discussions, as appropriate, to fully explain the reasons for, and the impact of, each material change in the individually significant line items of the Statement of Financial Condition. The discussions must quantify and state relevant percentage relationships for such changes, discuss the reasons for, e.g., reacting to the general marketplace or attempting to redirect or to the focus of the operations of the association, and what actions management took, to accomplish the changes. Alternately, cross references are required to be provided to sections of the Form OC or Form 10-K where such discussions appear. The following are often omitted in error:
- (a.) the increase/decrease in cash and cash equivalents;
  - (b.) the increase/decrease in loans in total and changes in the individual categories of loans outstanding and any shifts in the concentrations of loans over the period presented;
  - (c.) the increase/decrease in mortgage-backed securities;
  - (d.) the impact of the sale of branches in terms of reduction of deposits and the impact on interest income;
  - (e.) the increase/decrease in Federal Home Loan Bank advances.
  - (f.) fluctuations in reverse repurchase agreements; and
  - (g.) significant changes in FASB No. 107 Fair Value Disclosure.

Similarly, the association must ensure that material activity reported in the statements of Cash Flows is discussed.

22. Allowance for Loan Losses. Describe the factors responsible for the credits to the provision for loan losses during each period presented. Relate the discussion to the level of non-performing loans, economic conditions and other credit quality considerations. The table on page XX, the financial statements and the related discussions should be revised to refer to the reduction in the loan loss allowance.
23. The staff notes that the registration statement presents the consolidated statements of income on page X and on page X-3. Revise to present only one complete set of financial statements. The registrant may want to consider presenting a condensed income statement as part of the MD&A discussions.
24. Expand the Management Discussion and Analysis to provide qualitative information about the institution's market risks, how those risks are managed and changes in either the risk exposures or how they are managed. Also provide quantitative information about market risk sensitive instruments. Staff also recommends similar disclosure for Small Business registrants. (SEC Regulation S-X, 4-08)



## Common Reporting Comments

### *(Legal)*

1. A bold-faced legend should be added stating that the securities being offered are not savings or deposit accounts and are not insured by the FDIC, the BIF, the SAIF, or any other government agency.
2. The offering circular should disclose the institution's intended use for the proceeds of the offering and compensation arrangements with management, including stock plans, for a one-year period following the offering.
3. It is the staff's position that the closing meeting for breaking of an escrow upon reaching the minimum offering amount should coincide with obtaining the final regulatory approvals from the OTS and the FDIC. The offering may continue to attempt to reach the maximum offering amount. It should be noted that extending the expiration date of the conditional regulatory approvals does not extend the length of the offering. The date the offering will terminate should be stated, together with whether it can or will be extended, and under what conditions the offering circular and subscription period will terminate. In addition, both documents should make it clear that any extension of the subscription period, prior to that absolute outside termination date, will require regulatory approval and a supplemental solicitation documents (which would be filed with the OTS).
4. The front cover page should disclose that there is no market for the Common Stock, there can be no assurance that a secondary market will develop for the Common Stock or, if a secondary market does develop, that it will provide holders of the Common stock with liquidity of investment.
5. The factors management may consider (in their relative order of importance) in determining to terminate the offering should be stated.
6. Discussion should be added to state the factors management will consider (in their relative order of importance) in deciding to reject any offer in the direct community or public offering.
7. Management's Discussion and Analysis should present separately captioned discussions of interest income and interest expense for each reported period. The association should ensure that the comparative discussions for the reported periods focus on all material factors affecting these results of operations plus other relevant discussions, such as the actions management took to cause or impact the results, the reasons for management's actions, and the market forces acting on the association.
8. Discuss the management's right to withdraw, cancel or modify the offer.
9. The undertakings required by Item 512 of Regulation S-K should be included in Part II of the Offering Circular.
10. All proposed sales literature not accompanied by an offering circular should conform to the requirements of Rule 134 (17 C.F.R. Section 230.134). The "Letter to Customer," "Letter to Investor," "Press Release," "Community Meetings Slides," and "Q&As" should include only

that information referenced in Rule 134. Furthermore, solicitation materials to be accompanied by an offering circular should contain no information inconsistent with or different from that presented in the offering circular, nor should any presentation be made in a way that would render the information confusing or misleading. These materials should be carefully reviewed.

11. The form of proxy should identify clearly and impartially each separate matter to be acted upon. See 17 C.F.R. Section 240.14a-4(a).
12. In view of the anti-takeover aspects of the SOP and Management Recognition Plan, highlight that the overall effect of this proposal will render more difficult the accomplishment of mergers or the assumption of control by a principal stockholder, and thus to make difficult the removal of current management.
13. The Summary Compensation Table should disclose the compensation for the named executive officer for each of the Association's last three completed fiscal years as required by Item 402 of Regulation S-K. In the event the association qualifies as a small business issuer, supplementally state that the association meets the criteria as defined in Regulation SB.
14. Supplementally confirm to the staff that the association meets the criteria for reporting as "Form S-2" or "Form S-3" reporting companies; view the applicable criteria of each registrant's compliance with the form requirements.
15. An initial statement of beneficial ownership of equity securities on Form 3 must be filed within ten days after the event by which the person becomes a reporting person, i.e., officer, director, ten percent or more holder or other person, or must be filed on the registration date. See 17 C.F.R. Section 240.16a-3 and General Instructions to Form 3.
16. You should be aware that any person or group that acquires beneficial ownership of more than 5% of any class of equity securities of an association whose securities are registered under the Securities Exchange Act of 1934 ("Exchange Act") must report such acquisition within 10 days by filing a Schedule 13D with the association, each exchange where the association's security is traded, and the OTS' Business Transactions Division. Any material change in the facts set forth in the statement requires that an amendment be promptly filed. See 17 C.F.R. Section 240.13d-1 and 13d-2.
17. A separately captioned section should be included to discuss the potential for dilution of the book value per share of the Holding Company relative to the Savings Bank's book value. Discussion should be included of the potential dilution of the voting interests as a result of the offering and the issuance of warrants. A tabular presentation of the dilution should be included in the separately captioned section.
18. We note that there is no quoted market in the common stock, however, the disclosure should state the range of high and low bid information, if available, for the stock each full quarterly period within the two most recent fiscal years and any subsequent interim period for which financial statements are included as required by Item 201(a)(1)(iii) of Regulation S-K.

19. Supplementally discuss and confirm that the Association meets the eligibility requirements of a “small business issuer,” as defined in Rule 12b-2 of the Securities Exchange Act of 1934 (the “Exchange Act”) and Item 10(a) of Regulation S-B.

#### Proxy

20. If the Bank reserves the right to adjourn the meeting in order to solicit additional proxies, it is the staff’s view that adjournment for such purpose would constitute a substantive manner, and that the proxy would not confer discretionary authority under Rule 14a-4( c) to vote for adjournment in that context. Accordingly, in order to authorize a proxy holder to vote to adjourn the annual meeting in the event that sufficient votes are not obtained, the proxy card must include a separate proposal on this matter, and the proxy soliciting materials must include a discussion of the proposal pursuant to Item 21 of Schedule 14A of the Proxy Rules.

With respect to the holding company reorganization, the Company has included various provisions in its Certificate with anti-takeover and other effects, which vary significant from the charter of ABC. We refer to the examination of monetary liabilities of directors, shareholder voting requirements for the Holding Company exceeding the requirements of Delaware law and provisions of the ABC articles and bylaws (such as the super-majority vote required for certain amendments to the Certificate of Incorporation and to any Bylaws), the “procedures for certain business combinations” described at pages 27-28 and the “Anti-greenmall “ provision. As such, these are matters on which stockholders vote separately, to conform with Rule 14a-4 and Section II.H of SEC Release 34-31326. Revise the test of the Proxy Statement/Prospectus and the Proxy Card as appropriate to afford stockholders the opportunity to vote separately on each material matter effectively presented for their approval. You may mutually condition these “corporate governance” proposals and the proposal concerning the Plan, in order to ensure the entire package will either be adopted or rejected.

#### Use of Proceeds

21. This section should discuss with much greater specificity the intended use of proceeds of the offering and the dollar amount and priority of the intended use. See Item 504 of SEC Regulation S-B, 17 C.F.R. section 228.504. Note that the level of capital, i.e., regulatory capital classification of “well capitalized,” is not a use of proceeds, but a ramification of recording the transaction. This should be clarified in this section.

#### Regulation

22. This section should include a separately captioned discussion regarding current proposals before Congress to modernize the financial services industry and reform banking law.

#### Conversion/Charitable Foundation

23. The OTS regulations do not provide for the approval of the establishment of a private foundation. Accordingly, remove any and all statements in the proxy statement and/or the prospectus that indicate or imply that the OTS has “approved” the foundation. In addition, include a boldface statement in large type in the proxy statement and in the prospectus that indicates that the OTS has not approved or disapproved the establishment of the foundation.

Disclose that the foundation will be required to make annual filings with the IRS to maintain its tax exempt status. Briefly describe the nature of the information included in such annual filings (such as a list of the grants and awards made during the year), whether the foundation is required to make such filings or other reports public and, if so, describe how copies of such filings and/or reports may be obtained from the foundation. In this regard provide the name, address, telephone number, and fax number of the person to contact.

In the proxy statement and prospectus provide a detailed discussion of the board of directors' reasons for proposing the establishment of a private foundation rather than seeking to invest a similar amount of funds, under 12 C.F.R. section 545.74(d), in a community development subsidiary that would make investments that would serve primarily community, inner city or community development purposes and would qualify for CRA credit.

#### Conversion

24. A statement to the effect that OTS approval does not constitute recommendation or endorsement of the plan by the OTS and that conversion stock is not insured should be highlighted in the section entitled "The Conversion."

*Retyped Letter from the Securities and Exchange Commission*

January X, 1999

Chief Financial Officer  
Name of Bank Holding Company  
Address

Dear Chief Financial Officer:

In connection with our focus on transparent financial and potential earnings management issues, we may select your 1998 annual report for review. For your consideration as you prepare your filing, this letter identifies commonly requested disclosures that may be applicable in whole or part to your explanation of the provision for loan losses and the loan loss allowance.

**Description of Business**

Describe your systematic analysis and procedural discipline, required by FRR-28, for determining the amount of your loss allowance. Explain:

- . how you determine each element of the allowance,
- . which loans are evaluated individually and which loans are evaluated as a group,
- . how you determine both the allocated and unallocated portions of the allowance for loan losses,
- . how you determine the loss factors you apply to your graded loans to develop a general allowance, and
- . what self-correcting mechanism you use to reduce differences between estimated and actual observed losses.

**Management's Discussion and Analysis**

Explain fully the reason for changes in each of the elements and components of the loan loss allowance, even if the total provision for loan losses did not change materially from period to period, so that a reader can understand how changes in risks in the portfolio during each period relate to the loan loss allowance established at period-end. Qualify and explain:

- . how changes in loan concentrations, quality, and terms that occurred during the period are reflected in the allowance,
- . how changes in estimated methods and assumptions affected the allowance,
- . why reallocations of the allowance among different parts of the portfolio or different elements of the allowance occurred,
- . how actual charges and expected trends in risks associated with cross border outstandings affected the allowance, and
- . how the level of your allowance compares with historical net loss experience.

## Financial Statements

Include a complete description of your accounting policy for the allowance for credit losses which specifically describes how you determine the amount of each element of the allowance.

## General

Please call [name and phone number] if you have any questions concerning this letter.

Sincerely,

Robert A. Bayless  
Chief Accountant  
[Division of Corporation Finance]

## **Hints to Speed Up the Conversion, Mutual Holding Company Conversion & Merger Review Process**

1. Black line or highlight (eight manually or mechanically) each change in an amended filing. Include an updated and signed accountant's consent letter for each audit report included in the filing. Updated consent letters should specifically make reference to the amended filing and the use of the firm's name in the "Experts" section.
2. Provide the name and telephone number of the independent accountant(s), or designated representative, with whom the comments are to be discussed.
3. Allow sufficient time for the staff to review and response to review comments. Avoid filing updates on or close to the 135<sup>th</sup> day. Comments are usually issued within 30 days of the original filing. Comments on amendments are usually resolved within two days.
4. The regulation currently requires the filing of three copies of mutual holding company applications. File seven (7) copies to ensure a faster response time. Also send one courtesy copy to Roger Smith, Senior Review Accountant.
5. Bind and sequentially number all pages in all filings.
6. Include in the application the required financial statements and related financial data for both the acquirer and the acquiree in filings involving mergers. Incorporation by reference is not permitted.
7. Report financial tables and schedules in the forepart of the application in the same chronological order as that used for the financial statements.
8. Notify OTS if you decide not to go forward with a pending application or plan to update quarterly financial information. This will allow the staff to concentrate on active filings.
9. Review the latest report of examination and the latest special Year 2000 examination report.
10. Do not fail to make agreed-upon changes or furnish responses to request for supplemental information.
11. Prepare and submit a schedule that discloses the key dates for timely completion of the filing process including the date the registrant intends to go public.
12. Base all discussions in the financial statements and in the Management's Discussion and Analysis on generally accepted accounting principles. Any discussions of regulatory accounting principles should not overshadow the importance of generally accepted accounting principles.
13. If the filing is a dual filing with OTS and the Securities and Exchange Commission, (SEC), then provide OTS with a copy of the SEC comments and management's responses thereto.

14. Avoid the use of boiler plate language in Year 2000 (Y2K) discussions. Y2K disclosures are considered to be material for all thrifts.
15. Conversion applications should submit their business plans to the Regional Director prior to the filing of the conversion application.
16. Submit a reputable appraisal. Appraisals which tend to "low-ball" will cause significant processing delays.
17. The OTS regulations require the OTS to review the application's performance under the CRA, the contents of the business plan submitted in support of the application and other factors relating to the applicant's performance in meeting the convenience and needs of the delineating community. Non-compliance with CRA guidelines may cause significant delays in the overall approval process. Contact your OTS Regional Office regarding management renumeration and proposed stock benefits plans prior to filing your application. Submit proposed renumeration plans and stock benefit plans (even if such plans are not intended to be implemented within the first year following conversion) as part of the application.
18. Provide a separate copy of your cover letter for each application or amended application. This will prevent distribution delays caused by making copies of cover letters.
19. Auditor materiality levels should be set at the level of each subsidiary thrift required to file a Thrift Financial Report; when the thrift or thrifts exist under a holding company structure in instances where separate audits are not issued for the subsidiary.
20. The Management Discussion and Analysis section should discuss the current status of the institution's Year 2000 plans. The discussion should describe the institutions ability or inability to comply, what tests have been prepared or are planned, the related costs and any material risks associated with implementation. Also discuss management's contingency plans. Compare the intended disclosures with the OTS' most recent Y2K examination. Material deficiencies, if any, should be discussed along with specifics of how and when the deficiencies will be resolved.
21. Filings made pursuant to the provisions of the Securities and Exchange Commission Regulation SB, should clearly present the Small Business Election on the front cover.



June 2000

## OFFICE OF THRIFT SUPERVISION

**1700 G STREET, N.W.**

**WASHINGTON, DC 20552**

### SECURITIES FILINGS TELEPHONE DIRECTORY

Main Exchange .....	202-906-6000
Information Services.....	202-906-5910
Accounting Policy Division	
Timothy J. Stier, Chief Accountant.....	202-906-5699
Christine A. Smith, Policy Analyst.....	202-906-5740
Conversions/Mutual Holding Company Conversions/ '34 Act Securities Filings	
Roger M. Smith, Senior Review Accountant.....	202-906-5714
Harrison E. Greene, Review Accountant.....	202-906-7933
Research and Analysis, Financial Reporting Division	
Trudy Reeves, Thrift Financial Reports.....	202-906-7317
Business Transactions Division	
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David A. Permut, Counsel.....	202-906-7505
Offerings	
Gary L. Jeffers, Senior Attorney.....	202-906-6457
Examination and Supervision (applications and filings)	
Duane H. Thorkildsen, Director.....	202-906-6990
Appraisals	
Fred R. Cortese, Chief Financial Analyst.....	202-906-7096

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# OTS Regions



## Regional Accountants

### **West Region**

*San Francisco, California*

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